



# NEWS

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## **SUMMARY OF CASES ACCEPTED DURING THE WEEK OF APRIL 21, 2003**

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#03-53 People v. Braxton, S114375. (A096083; 106 Cal.App.4th 137; Solano County Superior Court; FCR178124.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case presents the following issues: (1) Was defendant entitled to a new trial under Penal Code section 1202 where the trial court refused to consider defense counsel's oral new trial motion at sentencing? (2) In general, when a trial court initially refuses to consider a new trial motion, must a defendant specifically bring the provisions of section 1202 to the trial court's attention in order to obtain the remedy provided by that section? (3) Should the Court of Appeal have remanded for a hearing on defendant's new trial motion rather than reversing the judgment and granting a new trial?

#03-54 People v. Casper, S114285. (D038550; 105 Cal.App.4th 1373, mod. 106 Cal.App.4th 653o; San Diego County Superior Court; SCD151173.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses. This case presents the following issue: If the trial court dismisses prior conviction allegations under the three strikes law with respect to the computation of the term to be imposed on some but not all counts, is the defendant nonetheless subject to mandatory consecutive sentences under the three strikes law on all

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of the counts involving crimes that were not committed on the same occasion and not arising out of the same set of operative facts, including those counts as to which the prior convictions were dismissed?

#03-55 People v. Johnson, S113803. (H023838; 105 Cal.App.4th 515, mod. 106 Cal.App.4th 303a; Santa Clara County Superior Court; 208944.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses. This case includes the following issue: Where the trial court recalls a sentence under Penal Code section 1170, subdivision (d), and resentsences the defendant, is the defendant entitled to presentence credit under Penal Code section 4019 for the time the defendant spent in prison serving his or her original sentence before the resentencing?

#03-56 People v. Leal, S114399. (H023031; 105 Cal.App.4th 833; Santa Clara County Superior Court; C9952837.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Does the element of “duress” for purposes of forcible sexual offenses other than rape and spousal rape include within its definition the concept of “hardship” that was deleted from the definition of “duress” for forcible rape and spousal rape (Stats. 1993, ch. 595, § 1), or does the deletion of “hardship” from the definition of “duress” in those statutes apply to the meaning of “duress” for all forcible sexual offenses? This issue is also pending before the court in People v. Edmonton, S112168 (#03-13).

#03-57 Mackey v. Department of Corrections, S114097. (C040262; 105 Cal.App.4th 945; Sacramento County Superior Court; 99AS03354.) Petition for review after the Court of Appeal affirmed the summary judgment in a civil action. This case presents the following issues: (1) When a male supervisor repeatedly grants favorable treatment in promotions and other employment decisions to female employees with whom the supervisor has had a consensual sexual relationship, may such conduct support a claim of sexual harassment under the Fair Employment and Housing Act (FEHA) by female employees who have not been involved in such a relationship with the supervisor? (2) Even if plaintiffs lacked a viable claim for sexual harassment under FEHA on the

basis of the foregoing conduct, do the anti-retaliation provisions of FEHA prohibit an employer from subjecting plaintiffs to adverse treatment for making such a claim?

#03-58 Powerine Oil Co. v. Superior Court, S113295. (B156216; 104 Cal.App.4th 957; Los Angeles County Superior Court; VC025771.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Does an “excess” or “umbrella” liability insurance policy require the insurer to indemnify its insured for the costs and expenses incurred to comply with clean-up orders issued during administrative environmental proceedings, when the coverage provision of the policy states that the policy provides coverage for “damages . . . and expenses”?

#03-59 County of San Diego v. Ace Property & Casualty Ins. Co., S114778. (D038707; 106 Cal.App.4th 349; San Diego County Superior Court; GIC732418. ) Petition for review after the Court of Appeal affirmed the summary judgment in a civil action. This case presents the following issue: Does an “excess” or “umbrella” liability insurance policy require the insurer to indemnify its insured for the costs and expenses incurred to comply with clean-up orders issued during administrative environmental proceedings, when the coverage provision of the policy states that the policy provides coverage for “damages”?

#03-60 Smith v. M.D., S114192. (B159868, B160628; 105 Cal.App.4th 1169; Los Angeles County Superior Court; MC013255.) Petition for review after the Court of Appeal dismissed appeal and granted a petition for peremptory writ of mandate. The court ordered briefing deferred pending decision in Balser v. Wells Fargo Bank, N.A., S101833 (#01-170), and Mulder v. Pilot Air Freight, S105483 (#02-86), which present the following issue: Is the privilege for reporting suspected criminal activity to a police officer (Civ. Code. § 47(b)), absolute or does it apply only to statements made in good faith?

#03-61 U.K. Abba Products, Inc. v. Northbrook National Ins. Co., Inc., S114148. (G028565; unpublished opinion; Orange County Superior Court; 818029.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court ordered briefing deferred pending decision in Hameid v. National Fire Ins. of Hartford,

S104157 (#02-62), which includes the following issue: Does an insurer have a duty, under the “advertising injury” coverage of a comprehensive general liability insurance policy, to defend its insured against an action alleging that the insured engaged in unfair competition by obtaining a competitor’s customer list and customer preference information and then soliciting those customers?

## **STATUS**

#02-161 Department of Finance v. Commission on State Mandates, S109219.

The court ordered supplemental briefing on the following issues: Is a school district precluded from using a portion of the funds obtained from the state for the implementation of the any of the underlying funded programs at issue in this case, to pay the associated notice and agenda costs at issue in this case? Does the Bilingual-Bicultural Education program authorize school districts to do so? (See Educ. Code, § 52168, subd. (b) [“School districts may claim funds appropriated for purposes of this article for expenditures in, but not limited to, the following categories: . . . (6) Reasonable district administrative expenses . . . .”].) If so, is there any indication that the Legislature has mandated a different rule for any of the other programs here at issue?

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